UNITED STATES PATENT AND TRADEMARK OFFICE

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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Ex parte DAVID SELINGER,
TYLER KOHN,
MICHAEL DeCOURCEY,
SUNDEEP AHUJA, JAMES OSIAL,
and ALBERT SUNWOO

_____

Appeal 2015–000819
Application 12/012,451
Technology Center 3600

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Before HUBERT C. LORIN, ANTON W. FETTING, and
BIBHU R. MOHANTY, *Administrative Patent Judges.*

FETTING, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE[1]

David Selinger, Tyler Kohn, Michael DeCourcey, Sundeep Ahuja,

James Osial, and Albert Sunwoo (Appellants) seek review under

35 U.S.C. § 134 of a non–final rejection of claims 1–20, the only claims

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[1] Our decision will make reference to the Appellants' Appeal Brief ("App.
Br.," filed December 23, 2013) and Reply Brief ("Reply Br.," filed October
17, 2014), and the Examiner's Answer ("Ans.," mailed August 18, 2014),
and Non-Final Action ("Non-Final Act.," mailed July 19, 2013).

pending in the application on appeal. We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b).

The Appellants invented a way of providing targeted content, such as advertising, by analyzing the context in which the content is to be provided in light of known attributes of the content available to be provided and the one or more recipients of the content. Specification para. 1.

An understanding of the invention can be derived from a reading of exemplary claim 1, which is reproduced below (bracketed matter and some paragraphing added).

> 1. A computer-implemented process comprising:
>
> [1] generating a user model for a user
>
>> based at least in part on interactions between the user and a first originating retailer,
>>
>> the generating of the user model being performed by a configured computer system;
>
> [2] receiving a request from a manufacturer of one or [more] products sold by one or more originating retailers that include the first originating retailer,
>
>> the request being to advertise the one or more products,
>>
>> the receiving of the request being performed by the configured computer system;
>
> [3] identifying at least one of the one or more products to advertise to the user
>
>> by applying advertisement-specific selection models to the user model
>>
>> to identify which of the one or more products is relevant to the user
>>
>> based on information included in the applied advertisement- specific selection models regarding types

of users to which the at least one products are marketable,

the identifying of the at least one products being performed by the configured computer system;

and

[4] sending a communication to the user

including one or more advertisements for the identified at least one products,

wherein the sent communication is configured

to appear to the user to have been sent by the first originating retailer,

the sending of the communication being performed by the configured computer system.

The Examiner relies upon the following prior art:

Van Der Riet	US 2003/0126146 A1	July 3, 2003
Goyal	US 2009/0030785 A1	Jan. 29, 2009
Barton	US 2009/0192888 A1	July 30, 2009

Claims 1–4, 7–10, 13–17, and 20 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Barton and Van Der Riet.

Claims 5, 11, and 18 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Barton, Van Der Riet, and Goyal.

Claims 6, 12, and 19 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Barton, Van Der Riet, and Official Notice.

ISSUES

The issues of obviousness turn primarily on whether the representational characterizations Barton describes are within the scope of models.

FACTS PERTINENT TO THE ISSUES

The following enumerated Findings of Fact (FF) are believed to be supported by a preponderance of the evidence.

Facts Related to Claim Construction

    01.   An advertisement-specific selection model is a model that includes information regarding the types of users to which a particular advertisement is to be directed. Spec. para. 126.

    02.   The Specification does not lexicographically define a model.

    03.   The ordinary meaning of a model is a representation of something.[2]

Facts Related to Appellants' Disclosure

    04.   An advertisement-specific selection model is a model that includes information regarding the types of users to which a particular advertisement is to be directed. It is analogous in form and function to the various selection models described herein, with the distinction that the advertisement-specific selection

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[2] American Heritage Dictionary,
https://www.ahdictionary.com/word/search.html?q=model.

model is based on information regarding the data/demographics of user models to be selected. For example, based on data collected as part of this and other systems and processes, it may be known that a particular product is highly marketable within a given age range, gender, geographic location, income level, race, purchasing history, etc. This identified demographic information would be included as the data set within the advertisement-specific selection model and would be used to search and identify the desired user models to be selected and utilized in the process for identifying a subset of users for which a non-competitive advertisement is relevant. Spec. para. 126.

Facts Related to the Prior Art

Barton

05.   Barton is directed to targeted advertisements. Barton para. 2.

06.   Barton describes obtaining purchase information submitted by a user making a purchase on the website. The purchase information is used to determine an advertisement for a product or service related to the purchase but of a different type than the purchase. An advertisement is displayed on the website when the purchase is completed. Barton para. 7.

07.   Barton describes retailers wishing to place their advertisements in opportune times and places. Targeted advertisements can be more effective and cost efficient when displayed at the time, or immediately after, a user has acted on a decision to purchase and is waiting for a confirmation message. The act performed may be

the submission of information at checkout. Rather than displaying advertisements for goods or services similar to the good or service just purchased, Barton describes displaying advertisements for goods or services that are related to and/or complementary to the good or service just purchased. The user is more likely to purchase a related or complementary good or service than a similar good or service, since there is no need for a good or service similar to that just purchased. Further, it is likely that the related or complementary good or service will be highly relevant to the user, since the user was interested enough to complete a purchase for the purchased good or service. Purchase information may include but is not limited to information about the product(s) or service(s), the cost of the product(s), the amount the user paid, the location of the user, personal and financial information, the behavior of the user on the website, products selected and removed before checkout, or any other information that could be used to determine a relevant advertisement. Barton paras. 17–18.

08.   Barton describes purchase information being analyzed to determine advertisements for products or services that are related and/or complementary to the product or service purchased. This analysis may include comparing the purchase information to comparative information. This comparative information may be obtained by observing the user or the user's actions on the website. Comparative information may also be information previously, currently, or dynamically obtained from another source, database, or party. The comparative information may include information

about follow-on-purchase keyword purchases, keyword-advertisement relationship information, aggregated information from purchase or checkout histories, website search information, one or more personalized search histories, index word proximity information for one or more websites, retailer advertisement bidding information, product search clustering information, content of the landing or confirmation page during checkout, click-through rates of advertising over time, or keyword information provided by a third party. Comparative information can also include purchase information from other users or from previous purchases by the same user. Barton paras. 24–25.

09. Barton describes purchase information being analyzed to select one or more advertisements for products or services that are complementary and/or related to the purchased product or service. The advertisement for a complementary and/or related product or service may be selected based on a type of product or service included in the advertisement. That is, rather than selecting for display an advertisement for a similar type of product or service, an advertisement for a different type of product or service that is related in some way to the product or service purchased may be selected for display. For example, books are of a different type of product than flight information. A user may purchase a book about visiting India. Upon purchase, existing websites may show similar books about visiting India, chosen by previous purchasers of the selected book. Alternatively, such a purchase may result in a display of an advertisement for a good or service that is of a

different type of product or service than that of the book. Barton
para. 29.

Van Der Riet

10. Van Der Riet is directed to interactive marketing
communication and transaction/distribution services platform for
building and managing personalized customer relationships. This
provides consumers with privacy, product/retailer (re)search,
shopping and ad based personalized info, news and entertainment
services, its manufacturing and retailing clients with interactive
marketing communication, IT, research support and effectiveness
benchmarking services and interactive media and telecom
companies with premium advertising, needed to develop
profitable ad-based personalized interactive info, news and
entertainment services. Van Der Riet para. 1.

11. Van Der Riet describes holistic consumer profiles being created
by capturing consumer purchase behavior and preferences for the
largest possible range of product brands, categories, and retailers.
The holistic purchase-behavior specific consumer profiles allow
manufacturers and/or retailers to customize their product and
category presentations to reflect an individual consumer's needs,
independent of the portal that the consumer is using and
independent of the retailer where the consumer is purchasing. The
consumer profiles also allow manufacturers and/or retailers to
reach their consumers, by placing consumer customized purchase-
behavior specific advertising messages on the consumer's

personalized interactive shopping and ad sponsored info, news and entertainment services. Advertisers may customize their advertising messages on these services to reflect individual consumer's purchase and shopping needs, independent of the portal that the consumer has been using and independent of the retailers where the consumer has been making purchases. By sponsoring content delivery with premium, customized advertising messages, it is possible to decrease the consumer's price for such services. Consumer's receive such services in return for consumers accepting the advertising exposure as well as agreeing to the registration of their shopping and purchase behavior, in a way that provides consumers with full control over their profile data and that permits this data to be processed into aggregated retailer and portal independent consumer feedback information, that can be automatically processed and channeled back to manufacturers and/or retailers. The processing of data allows manufacturers and/or retailers to receive portal and retailer independent information about consumer's needs as well as information that permits manufacturers and/or retailers to benchmark their different product and/or category presentations and customized ad messages against each other, thus, enabling them to evaluate the effectiveness of their communication programs, assortments and products. Van Der Riet paras. 19–20.

12. Van Der Riet describes each participating manufacturer using its Product Presentation Database to control/customize its presentations. Features which may be customized include,

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without limitation, specification of product presentation, target
audience, and exposure timings. The product presentation
database may be used by participating retailers to access and
provide up-to-date product presentations, by participating portals
to obtain the product presentation for consumers, by participating
consumers to get up-to-date product presentations, and/or by each
participating manufacturer to get effectiveness measurement data,
such as indicators on the presentation's impact on consumer's
shopping behavior, benchmarking data for comparing the
performance of presentations against each other, or measurement
standards for assessing presentations portal and retailer
independent. Van Der Riet paras. 145–146.

13. The product presentation database is filled with product
presentation data that is uploaded by manufacturers of goods,
providers of services and retailers in the case of retailer branded
private-label products. Manufacturers, for example, may submit
presentation information for each of its products to the product
presentation database and may update that information over time,
as their product line, product availability, or specific product
specifications may change. Further, the manufacturer will
populate the ad messages database with advertisements to be
delivered to a specific consumer target audience, based on
purchase-based profile criteria and/or consumer audience that the
advertiser wants to reach with his advertising message.
Van Der Riet para. 159.

Goyal

14. Goyal is directed to translating user interaction with rich media advertising into brand effectiveness models. Goyal para. 2.

15. Goyal describes calculating brand index (BI) for interactive rich media advertising that produces a brand effectiveness model. The method includes categorizing advertising exposure of a rich media ad into a type of bucket in memory, and for each type of bucket by a processor: assigning a weight to each of a plurality of data types collected in the bucket stored in memory, assigning a score in memory to each of the data types collected in the bucket, tracking a frequency of occurrence of each data type, and calculating a bucket brand index (BBI) for the bucket as a product of the assigned weight, the assigned score, and the tracked frequency. The method further includes assigning a bucket weight to each type of bucket stored in memory, calculating a weighted sum of a plurality of BBIs of the buckets to generate an overall brand index (BI) for an ad campaign by summing the weight of each bucket times the BBI of each respective bucket, and communicating the BI of the campaign to an advertiser or publisher as an indication of the monetization value of the rich media ad. Goyal para. 8.

16. Goyal describes categorizing advertising exposure of some of a plurality of rich media ads into a first type of bucket stored in memory, and for each first type of bucket a processor: assigning a weight to each of a plurality of data types collected in the bucket, assigning a score to each of the data types collected in the bucket,

tracking a frequency of occurrence of each data type, and
calculating the bucket brand index (BBI) for the bucket as a
product of the assigned weight, the assigned score, and the tracked
frequency. The method further includes categorizing advertising
exposure of the remainder of the plurality of rich media ads into a
second type of bucket stored in memory, and for each second type
of bucket the processor: collecting a plurality of data types
(d.sub.1, d.sub.2, . . . , d.sub.m) in the bucket stored in memory,
and expressing a bucket brand index (BBI) as a function of the
plurality of data types, f(d.sub.1, d.sub.2, . . . , d.sub.m), wherein
the function is finite, non-negative, and real for all non-negative
and finite (d). The method further includes assigning a bucket
weight to each first and second types of buckets stored in memory,
calculating a weighted sum of a plurality of BBIs of the first and
second buckets to generate an overall brand index (BI) for an ad
campaign by summing the weight of each bucket times the BBI of
each respective bucket, and communicating the BI of the
campaign to an advertiser or publisher as an indication of the
monetization value of the rich media ad. Goyal para. 8.

ANALYSIS

We adopt the Examiner's findings and analysis from Final Action 3–7
and Answer 3–12 and reach similar legal conclusions. We now address the
arguments in the Reply Brief.

Claims 1–4, 7–10, 13–17, and 20 rejected under 35 U.S.C. § 103(a) as
unpatentable over Barton and Van Der Riet

We are not persuaded by Appellants' argument that the Examiner fails to demonstrate that the relied-upon references disclose using an advertisement-specific selection model that specifies a type of user for a product. Reply Br. 6–10. As the claims revolve around models, we first construe a model. A model is a representation of something. FF 02–03.

The Examiner finds that Barton describes a user model as the user being represented by a transaction. This models the user's behavior and product desired based on an actual transaction. The Examiner then finds that Barton describes an advertisement-specific selection model as the representation of ads for products that are related and/or complementary to the product or service purchased. Final Act. 3–5. See also FF 07.

The Specification defines such a model as one that includes information regarding the types of users to which a particular advertisement is to be directed. FF 01. Barton represents user types by the products they purchase, and Barton's advertisement selection model applies its selection criteria to an actual purchase. Thus, Barton applies its advertisement selection model to the actual purchase user model to identify which of the one or more products is relevant to the user based on information regarding related and/or complementary products included in the applied advertisement selection models regarding types of users based on actual purchases to which the purchased products are marketable.

We are not persuaded by Appellants' argument that the Examiner fails to demonstrate that the relied-upon references disclose that a product

advertisement sent to a user is configured to appear to be from a retailer that sells the product, but is sent based on a received request from a manufacturer of the product, after identifying the user as being appropriate for the product based in part on previous interactions between the user and the retailer. Reply Br. 10–13.

Appellants did not raise this issue in the Appeal Brief and nothing in the Examiner's Answer response would trigger this argument. The Examiner was not given the opportunity to respond to this argument in the Answer. In any event, we find that this limitation is undeserving of patentable weight. The limitation recites no implementation for how the communication is configured to appear to the user to have been sent by the first originating retailer. Thus the limitation only recites a perception discernable only in the mind of the beholder. Such perceptual limitations are afforded no patentable weight. *In re Bernhart*, 417 F.2d 1395, 1399 (CCPA 1969). The test for whether patentable weight should be afforded is whether the steps rely on the limitation or the limitation relies on the steps. *In re Ngai,* 367 F.3d 1336, 1339 (Fed Cir 2004). Here the steps in no way depend on the perception of the ad appearing to be from a retailer and perception of the ad appearing to be from a retailer in no way depends on the steps. This is again because no implementation is recited that would physically or functionally narrow how the perception is caused.

Claims 5, 11, and 18 rejected under 35 U.S.C. § 103(a) as unpatentable over
Barton, Van Der Riet, and Goyal

These claims recited identifying by a weighted scoring system correlations between the user model and the advertisement-specific selection models. We are not persuaded by Appellants' argument that Goyal fails to describe this. Reply Br. 13–16. Goyal describes the notoriously well-known use of weights for correlating statistics in behavioral models, particularly those used in advertising. Appellants essentially argue that Goyal does not explicitly describe using this in the exact set of models recited in the claims. But as Barton already describes such models, Goyal is only applied to show it was known to improve such a model based on weighted correlations.

Claims 6, 12, and 19 rejected under 35 U.S.C. § 103(a) as unpatentable over
Barton, Van Der Riet, and Official Notice

These are not separately argued in the Reply Brief.

CONCLUSIONS OF LAW

The rejection of claims 1–4, 7–10, 13–17, and 20 under 35 U.S.C. § 103(a) as unpatentable over Barton and Van Der Riet is proper.

The rejection of claims 5, 11, and 18 under 35 U.S.C. § 103(a) as unpatentable over Barton, Van Der Riet, and Goyal is proper.

The rejection of claims 6, 12, and 19 under 35 U.S.C. § 103(a) as unpatentable over Barton, Van Der Riet, and Official Notice is proper.

DECISION

The rejection of claims 1–20 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2011).

<u>AFFIRMED</u>